

Claimant argues that because there was no dispute that she suffered a work-related injury, the respondent has failed to raise a jurisdictional issue subject to board review. In the alternative, claimant notes that even though there were medical opinions that the syringe was neither caused nor aggravated by the accident, there were two medical opinions that claimant needed additional treatment for her thoracic strain. Consequently, claimant requests the ALJ's Order be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein and the parties' briefs, the Board makes the following findings of fact and conclusions of law:

The claimant was employed as a hospitality aide for respondent. Her job duties included making beds and pushing the patients to and from their rooms. Occasionally she would help lift patients off their beds and on and off the toilet.

While making a bed the claimant experienced the sudden onset of pain in her upper back. Claimant reported the incident and was referred for treatment. Claimant was initially seen by Dr. Kevin E. Hughes who provided claimant with pain medication and took her off work. Dr. Hughes then referred the claimant to Dr. Mary Ann Hoffmann.

Dr. Hoffmann noted that an MRI had revealed claimant had a syrinx extending from T6-11. The doctor noted this finding might be a red herring and unrelated to claimant's thoracic spine pain. But because Dr. Hoffmann did not have much experience with syringes, she referred claimant to Dr. Phillip D. Hylton for an evaluation of that condition.

Dr. Hylton examined claimant and concluded there was no relationship between claimant's traumatic incident and the hydromyelia. Claimant became angry when advised of this opinion and requested referral for another opinion.

Dr. Hughes then referred claimant to Dr. Paul L. O'Boynick for another opinion. Dr. O'Boynick also concluded claimant's symptoms were not related to the syrinx.

Claimant was then examined by Dr. Striebinger who concluded that claimant's thoracic spine pain was not caused by the syrinx formation. The doctor opined claimant's thoracic pain was due to soft tissue injury and he prescribed physical therapy and conditioning exercises for the thoracic spine.

Claimant's attorney referred her to Dr. Edward J. Prostic. After examining the claimant, Dr. Prostic concluded claimant had aggravated the preexisting hydromyelia. Dr. Prostic recommended additional MRI scans, neurologic examinations and opined that if the condition progressed, surgical shunting would be required.

Initially, claimant contends the respondent has not raised a jurisdictional issue subject to Board review from a preliminary hearing. The issue for Board review is whether claimant's present need for medical treatment is the result of an accidental injury that arose out of and in the course of her employment with respondent. That issue is jurisdictional and grants the Board the authority to review preliminary hearing findings.¹

¹ See K.S.A. 44-534a(a)(2).

It is undisputed claimant suffered a work-related injury and was referred for treatment for her thoracic pain complaints. In the course of treatment the diagnostic tests revealed claimant had a preexisting syrinx in her thoracic spine from T6-11. Dr. Hoffmann then referred claimant for consultation to determine whether that condition was causing the pain.

Drs. O'Boynick, Hylton and Striebinger concluded the preexisting syrinx was neither caused nor aggravated by the work-related accident. Conversely, Dr. Prostic concluded the preexisting condition had been aggravated by the work-related accident.

Respondent argues that Dr. Prostic's opinion should be disregarded because he did not have an accurate history of claimant's prior back injuries. But even if the opinions that claimant's syrinx was neither caused nor aggravated by her work-related accident are adopted, the issue whether claimant is entitled to medical treatment for her work-related injury is not resolved.

As Dr. Hoffmann suggested, the syrinx was a red herring and an insignificant finding if the opinions of Drs. O'Boynick, Hylton and Striebinger are adopted. But because that particular condition was eliminated as a cause for claimant's complaints of pain, she nonetheless still experienced pain in her thoracic spine. In that respect, although Dr. Striebinger ruled out any causal connection between the preexisting syrinx and claimant's complaints, he further opined that "the thoracic pain is due to soft tissue injury." Dr. Striebinger referred claimant for physical therapy and conditioning exercises for the thoracic spine as a result of the soft tissue injury caused by the work-related accident.

The ALJ concluded, and the Board agrees, the claimant's present need for medical treatment is the result of the accidental injury that arose out of and in the course of her employment with respondent.

AWARD

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Brad E. Avery dated April 17, 2003, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2003.

BOARD MEMBER

c: Chris Miller, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation